



LATE

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 1028, RELATING TO THE HAWAII HEALTH CONNECTOR.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Thursday, February 5, 2015

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): RUSSELL A. SUZUKI, Attorney General, or
LILI A. YOUNG, and RANDALL S. NISHIYAMA, Deputy Attorneys General

Chair Baker and Members of the Committee:

The Department of the Attorney General raises the following concerns.

This bill, in part, supports the self-sustainability of the State's health insurance exchange known as the Hawaii Health Connector (Connector), authorizing it to issue debentures by amending chapter 435H, Hawaii Revised Statutes (HRS). It makes other changes to the Connector's authority as well.

Section 4 on page 5, lines 18-21, and page 6, lines 1-2, amends section 435H-2.5, HRS, by deleting the mandate that the Connector meet the requirements of chapter 42F in order to qualify for receipt of state funds. Deleting this provision does not mean that any state appropriations to fund the Connector are exempt from the requirements of chapter 42F because section 4 of article VII of the Hawaii State Constitution prohibits a "grant of public money or property . . . except pursuant to standards provided by law." Chapter 42F provides those standards. If this requirement is deleted as applied to the Connector, the Constitution requires either that chapter 42F requirements nonetheless be followed, or that alternative standards be developed and provided by law in order for the Connector to receive state funds. The Department of the Attorney General would be happy to work with the Legislature to achieve its intent.

Section 5 on page 6, lines 5-19, amends section 435H-3(a) by changing the date by which the Connector must be self-sustaining from January 1, 2015, to January 1, 2023. This is problematic because if passed, the state law would conflict with section 1311(d)(5) of the federal Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively ACA) that mandates that state based health

insurance exchanges be self-sustaining by January 1, 2015. The Connector may receive state funds and generate other funding allowed under federal and state law, to support its operations.

To address this inconsistency, we propose replacing the contents of section 5 on page 6, lines 5-19, with the following material, which would comport with the federal law:

§435H-3 Funding. (a) The connector may receive contributions, grants, endowments, fees, or gifts in cash or otherwise from public and private sources including corporations, businesses, foundations, governments, individuals, and other sources subject to rules adopted by the board. The State may appropriate moneys to the connector. As required by section 1311(d)(5)(A) of the Federal Act, the connector shall be self-sustaining by January 1, 2015[.], [and] To achieve self-sustainability, the connector may charge assessments or user fees to participating [health and dental] carriers, or may otherwise generate non-insurer based funding to support its operations. Moneys received by or under the supervision of the connector shall not be placed into the state treasury and the State shall not administer any moneys of the connector nor be responsible for the financial operations or solvency of the connector.

Section 5 on page 7, lines 15-21, and page 8, lines 1-2, amends section 435H-3 by adding a new subsection (f) authorizing the Connector to issue debentures that shall be guaranteed by the State but issued in the name of the Connector and not in the State's name. A debenture is a type of debt instrument that is not secured by physical assets or collateral, but is instead backed by the general credit of the issuer.

We see three issues with this section.

First, section 4, article VII, of the Hawaii State Constitution provides that the public credit shall not be used, directly or indirectly, except for a public purpose. A guarantee of the debentures by the State would use the State's credit. For that reason, we recommend that a statement of public purpose be included in the bill.

For example:

SECTION . The legislature finds that the sale of debentures by the Hawaii health connector can only be secured through the use of a guarantee of those debentures by the State.

The legislature finds and declares that the issuance of the guarantees of the debentures under this Act is in the public interest and for the public health, safety, and general welfare of the State.

The purpose of this Act is to assist the Hawaii health connector to continue operations by authorizing the State of Hawaii to guarantee debentures issued by the Hawaii health connector.

Second, the State should approve the terms of the debentures because it would ultimately be held liable as the guarantor. To that end we recommend adding after the second sentence in the new subsection (f) on page 7, line 18.: "The State of Hawaii shall approve the terms of the debentures before they are issued." We recommend that this bill should, also, identify the state agency that will be authorized to guarantee, approve, and oversee the issuance of the debentures by the Connector.

Third, clause 8, section 13, article VII, of the Hawaii State Constitution provides that where the State incurs a contingent liability on debt, a reasonable reserve must be established. The reasonableness of the reserve would be determined by the legislature. In addition, this reserve must be funded by either the Hawaii health connector or the State. While this bill authorizes the State to incur a contingent liability, it does not require or establish the constitutionally required reserve.

To effectuate the reasonable reserve requirement, we suggest the following:

SECTION . There is created a trust fund in the state treasury to be known as the Hawaii health connector debenture guarantee trust fund which shall serve as the reserve for all debentures guaranteed under this Act.

If funding for the reserve comes from the State, please consider the following language:

SECTION . There is appropriated out of the general revenues of the State of Hawaii the sum of \$, for fiscal year 2015-2016, to be deposited into the Hawaii health connector debenture guarantee trust fund. This sum, when and if necessary, shall be expended by the [name of expending agency to be inserted] for the purposes of this Act.

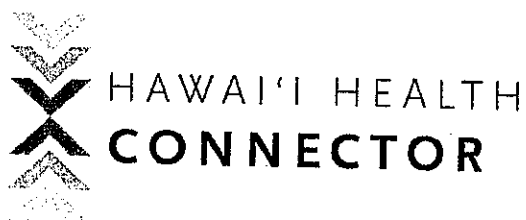
Section 5 on page 7, lines 8-12, amends section 435H-3 by adding a new subsection (d) allowing the Connector to "conduct enrollment, implementation, and benefit administration

services for employers and their employees for non-qualified health plans or other ancillary products and services.” We would suggest that the Legislature explore whether the Connector’s system is capable of achieving the functions set forth in new subsection (d), and to determine whether it will require federal funding and federal approval to achieve this end.

Finally, as this bill seeks to amend chapter 435H by the addition of revenue-generating authority for the Connector which will require compliance with state laws related to funding, we propose the following language at section 5 on page 7, lines 13-14, to ensure compliance with state laws, in addition to federal laws:

[(d)] (e) All plans to generate revenue for the connector shall be in compliance with federal ~~law~~ and state laws, rules, and regulations.

We respectfully request that this Committee consider our comments.



LATE

The Honorable Rosalyn Baker
Chair, Committee on Commerce and Consumer Protection

The Honorable Brian Taniguchi
Vice Chair, Committee on Commerce and Consumer Protection

Re: Testimony regarding S.B. 745 and S.B. 1028, Relating to the Hawaii Health Connector.

Hearing scheduled for February 5, 2014, at 9:00 a.m.

Chair Baker, Vice Chair Taniguchi, and members of the Committee on Health,

My name is Jeff Kissel, Executive Director of the Hawai'i Health Connector (the "Connector"), speaking on behalf of the Connector and its Board of Directors.

It is a pleasure to be with you today to discuss S.B. 745 and S.B. 1028, two bills that impact the Hawai'i Health Connector.

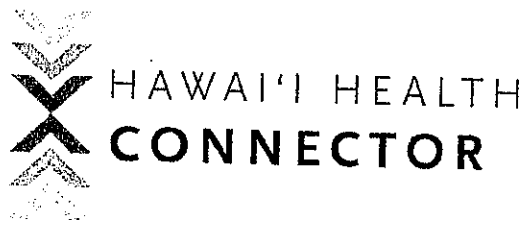
S.B. 745

The impact of S.B. 745 is to give equal access to Hawaii's major insurance providers. Sometimes referred to as a "tying provision," it requires that any health insurer, who services more than 20 percent of the health insurance marketplace will offer coverage on the Connector. While there may be differences on how the policy is implemented in each state, a majority of states have already adopted a "tying provision" like the one that is before you today.

The Connector can support this change with its current technology system.

S.B. 1028

At the end of 2014, the Connector submitted its Annual Report and Sustainability Plan. The report shows that the Connector is a viable, sustainable business, and shows, that with community support, the Connector can bring a significant return on investment by bringing



Today, more than 17,500 Hawaii residents are enrolled in plans through the Hawaii Health Connector. This compares with less than 2,000 at the same time last year. Momentum is building, daily enrollments are increasing as more and more of our citizens experience a better quality enrollment process supported by improved technology, better trained staff and faster access to lower the cost of health insurance plans.

In addition to establishing a State Based Exchange (SBE), Hawaii has been able to expand its Medicaid offerings to more than 50,000 additional residents at virtually no cost to the State. In fact, by expanding Medicaid and offering access to health care through the Connector, our community is not just saving many millions of dollars each year in unreimbursed health care costs, but also providing for a healthier more productive population.

The federal government through the Affordable Care Act funded the development and initial operation of our State Based Exchange. It did not provide the "start up" capital necessary to support operations until the Connector insures sufficient lives to start to pay its own operating expenses. Like most businesses, it will take time to develop sufficient revenue to cover the cost of operation. We have provided detailed financial information in our Annual Report that shows when the Connector is likely to break even and generate surplus revenue.

It is important to recognize the difference between generating a surplus and sustainability. All businesses require operating capital to pay expenses until they can turn a profit. The Connector is no exception. There is an important difference, however. While investors in start-up enterprises must usually wait to achieve a return on investment, the people of Hawaii are already receiving a substantial return on the Connector. In its first 3 years of operation, as our Annual Report shows, health insurance purchased through the Connector generated more than \$55 million in direct federal tax subsidies to businesses and the residents of Hawaii. The expanded Medicaid program together with the insured enrollment on the Connector is already reducing the uncompensated costs that are passed along to the rest of us.

Also, Hawaii has been able to benefit from another immediate return. Effective March 1st, about \$30 million per year in the medical costs for just one group of 7,500 individuals will be transferred from our community to the Federal Government through the Connector under the terms of the Affordable Care Act.

Honorable Senators, this is not a discussion of funding a loss for an indeterminate period of time. It is choice about whether or not to facilitate a commitment of up to \$28 million over the next six years, that will be repaid, to continue to return the immediate benefits I just



discussed and then generate not just half a billion dollars in direct federal tax payments but also the substantial return to each and every family, our businesses and the community resulting from a healthier, more productive population.

LATE



HPCA

HAWAII PRIMARY CARE ASSOCIATION

Senate Committee on Commerce and Consumer Protection
The Hon. Rosalyn H. Baker, Chair
The Hon. Brian T. Taniguchi, Vice Chair

Testimony on Senate Bill 1028
Relating to the Hawaii Health Connector
Submitted by Robert Hirokawa, Chief Executive Officer
February 5, 2015, 9:00 am, Room 229

The Hawaii Primary Care Association (HPCA), which represents the federally qualified community health centers (FQHC) in Hawaii, supports Senate Bill 1028 and offers amendments.

Under the Affordable Care Act (ACA), the intent behind creating state health insurance exchanges was to have a venue for competitive insurance plan comparison so as to provide for better premium rates to consumers. As such, the HPCA supports this measure, finding that a sustainable connector with a robust availability of services furthers these goals.

Additionally, Section 1302(g) of the ACA requires qualified health plans (QHP) in state exchanges to pay FQHCs for services provided at an amount no less than that defined in Section 1902(bb) of the Social Security Act (42 USC 1396a(bb).)

Given the recent decision to remove 7,500 legal COFA migrants from the Medicaid program and enroll them in the Hawaii Health Connector, Hawaii should consider statutory language that protects the continuity of care, and the provider-patient relationship, by mirroring federal ACA law in state law and requiring QHPs in the Connector to contract with FQHCs and utilize the payment methodology in the Section 1902(bb) of the Social Security Act.

The HPCA suggests the following amendment to House Bill 726:

The insurance commissioner shall require that each qualified health plan, as a condition of certification, shall (1) offer to any willing Federally-qualified health center (as defined in Section 1905(l)(2)(B) of the Social Security Act (42 USC 1396d(l)(2)(B))) providing services in geographic areas served by the plan, the opportunity to contract with such plan to provide to the plan's enrollees all ambulatory services that are covered by the plan that the center offers to provide and (2) reimburse each such center for such services as provided in Section 1902(bb) of the Social Security Act, 42 U.S.C. § 1396a(bb).

Thank you for the opportunity to testify and we look forward to further discussion on this important matter.